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COMMITTEE FOR PUBLIC COUNSEL SERVICES
PERFORMANCE STANDARDS
GOVERNING THE REPRESENTATION OF CLIENTS IN
MENTAL HEALTH PROCEEDINGS

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CPCS PERFORMANCE STANDARDS GOVERNING THE REPRESENTATION OF CLIENTS IN CIVIL COMMITMENT PROCEEDINGS

These standards generally describe the steps which should be taken by an attorney who is assigned pursuant to G.L. c.123, §5, to represent a person in a civil commitment case who risks a six-month or one year civil commitment in a mental health facility. [See also standards for authority to treat proceedings which follow this section.]

1. The role of the attorney in a commitment case is to act as an advocate for the respondent, in opposition to the petition and to insure that the respondent is afforded all of his/her due process and other rights. [*Cf. In the Matter of the Mental Health of KGF*, 306 Mont. 1; 29 P.3d 485 (2001).] At a minimum, counsel must insure that the petitioning facility is made to meet its burden of proving, beyond a reasonable doubt, that the respondent meets the criteria for commitment.

2. Immediately upon receipt of the assignment of a case the attorney shall: (a) file an appearance in court; (b) communicate with the client to inform the client of the assignment; (c) arrange to meet with the client (if the attorney's schedule does not permit him/her to meet with the client no later than the next business day and promptly begin to work on the case, the attorney shall decline the assignment); and (d) shall not agree to a continuance of the case without first consulting with the client and obtaining his/her consent.

3. The attorney shall meet with the client as soon as possible, but in no event later than the next business day following the assignment. The purpose of this initial interview is to begin to develop a lawyer-client relationship based on mutual understanding and trust, to explain the commitment law and procedures to the client, to discuss the alternatives to continued hospitalization available to the client, to determine the client's version of the facts which led to the filing of the petition, and to determine the client's wishes regarding the litigation. While not required, the attorney should seek to obtain from his/her client written authorization to examine the client's medical record or, where the client is unable or unwilling to provide such authorization, a court order authorizing such examination. Finally, the attorney shall discuss the possibility of an independent evaluation.

4. If the attorney believes an independent examination will aid the client, and the client agrees to such an evaluation, the attorney shall file a motion for funds for an independent examination by a clinician of the client's choice and at the Commonwealth's expense. The client should be advised that such an examination will take time and may cause delay.

5. The attorney shall contact the independent clinician if a motion for funds is allowed. The attorney shall remind the doctor that his/her report is the property of the client and should be sent to the attorney, and that the report is not to be filed with the court or disclosed to the hospital attorney or staff without the permission of the patient's attorney. *See Commonwealth v. Thompson*, 386 Mass. 811 (1982). The attorney should also remind the doctor that the purpose of

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the examination is to evaluate: (i) the client's current mental state; (ii) the likelihood of serious harm if the client were to be discharged; (iii) the client's ability to care for himself outside of the hospital; (iv) the feasibility of any less restrictive alternatives to hospitalization; and (v), if commitment to Bridgewater State Hospital is sought, the need for "strict security."

6. The attorney shall thoroughly investigate the facts. This investigation shall include reading the complete medical records and interviewing the hospital staff, including the doctors, nurses, social workers and other staff. The attorney should also speak to other patients on the ward, friends and family members of the client, and staff of any other programs familiar with the client.

7. The attorney shall use formal discovery mechanisms if indicated and tactically advisable.

8. After reviewing the medical record and the commitment petition the attorney shall determine if any procedural defenses can be raised and, if appropriate, file appropriate motions with supporting memoranda. (Procedural defenses can be raised, for example, if the hospital failed to file the petition at the appropriate time or if the hearing has not been commenced within the four- or fourteen-day time period required by the statute, or if the petition fails to set forth facts in support of the petition. *See Hashimi v. Kalil*, 388 Mass. 607 (1983) and M.G.L. c.123, §7(c).)

9. After developing a thorough knowledge of the law and facts of the case, the attorney shall meet again with his/her client for the purpose of discussing strategy and alternatives to commitment. The attorney shall discuss with the client any available alternatives to commitment. These may include the participation in an out-patient psychotherapy and counseling program, a community support program, a day treatment program, or placement in a less restrictive environment such as a half-way house, a group residence, or an apartment program. The attorney should make it clear to the client that the ultimate decision regarding the proposal of alternatives to commitment must be made by the client. The attorney should reassure the client that the attorney will stand behind the client's decision and forcefully advocate the client's position.

10. After this client meeting, and if appropriate, the attorney shall enter into negotiations with relevant persons concerning the case (e.g. discussions with the treating physician(s) regarding alternatives to hospitalization; discussions with social workers and DMH area office officials or other providers regarding the availability of alternative placements).

11. If the attorney and the hospital can agree to a negotiated settlement the attorney shall meet with her/his client to explain the terms of the agreement and obtain the client's consent to the settlement. Should the client decline the settlement offer, the attorney shall be prepared to try the civil commitment case.

12. Prior to the hearing the attorney shall identify potential witnesses who will testify in support of the client. Where necessary, witnesses should be subpoenaed. The attorney shall meet with the witnesses in advance of the trial in order to prepare them for direct and cross-examination. The attorney shall review the medical record and identify those parts of the record which should not be admitted into evidence. The attorney should determine the identity of the hospital's witnesses in advance of the hearing, and make an effort, if tactically indicated, to interview them on the record and prepare appropriate cross-examination. The attorney shall discuss with the client the desirability of the client testifying. If the client wishes to testify, the attorney shall thoroughly prepare the client for direct and cross-examination.

13. During the hearing the attorney shall act as a zealous advocate for the client, insuring that the proper procedures are followed and that the client's interests are well represented.

14. After the hearing, the attorney shall meet with the client to explain the court's decision. If the client is committed, the attorney shall explain the client's right to appeal pursuant to M.G.L. ch.123, §9(a) and the client's right to file a petition for discharge in the superior court under M.G.L. ch.123, §9(b), and shall assist the client in doing so. (Where an appeal is filed the attorney shall, without delay, notify CPCS' Mental Health Litigation Unit in order that appellate counsel may be assigned). The attorney shall review the evidence which was presented at the hearing in order to advise the client about any steps the client can take during the commitment period in order to be discharged from the hospital.

STANDARDS LIST

CPCS PERFORMANCE STANDARDS GOVERNING
THE REPRESENTATION OF CLIENTS IN
AUTHORIZATION TO TREAT PROCEEDINGS

These standards describe the steps which should be taken by an attorney who has been assigned to represent the respondent in a guardianship proceeding or a proceeding under G.L. c.123, §8B in which the petitioner is requesting the authority to administer extraordinary medical treatment to the ward. Counsel is assigned to represent persons in these cases pursuant to *Rogers v. Commissioner of the Department of Mental Health*, 390 Mass. 489 (1983) and *Superintendent of Belchertown State School v. Saikewicz*, 373 Mass. 728 (1977). [See also standard for [illegible] which precede this section.]

1. The role of counsel in these cases is to be an advocate for the respondent, in opposition to the petition and to insure that the respondent is afforded all of his/her due process and other rights. [See letter in response to inquiry as to counsel's, court's & guardian's roles in "substututed judgment" proceedings.]

2. Immediately upon receipt of the assignment of the case the attorney shall (a) file an appearance in court; (b) notify petitioner's counsel of the assignment; (c) obtain a copy of the petition, the medical certificate, and any affidavits or other documents that were filed with the petition; (d) inform the client of the assignment (If the attorney is unable to meet with the client and to promptly begin working on the case, or if the attorney is unable to appear in court on the assigned date, s/he shall decline the appointment); (e) the attorney should not agree to a continuance of the case without first consulting with the client and obtaining his/her consent.

3. The attorney shall meet with the client as soon as possible, but in no event later than 48 hours prior to hearing. At this meeting the attorney shall, at a minimum, explain to the client his/her right to make his/her own decisions regarding treatment, and ascertain the client's wishes. S/he shall explain the role of the attorney, the law, determine the client's version of the facts, and the client's wishes. While not required, the attorney should seek to obtain from his/her client written authorization to examine the client's medical record or, where the client is unable or unwilling to provide such authorization, a court order authorizing such examination. Finally, the attorney shall discuss the possibility of an independent evaluation. *See* G.L. c.261, §27c(4) and *Guardianship of a Mentally Ill Person*, Mass.App.Ct. No. 85-0018 Civ. (Dreben, J.).

4. If the attorney believes an independent examination will aid the client, and the client agrees to such an evaluation, the attorney shall file a motion for funds for an independent examination by a clinician of the client's choosing and at the Commonwealth's expense. The client should be advised that such an examination will take time and may cause delay in hearing of the case.

5. The attorney shall contact the independent clinician if a motion for funds is allowed. The attorney shall remind the doctor that his/her report is the property of the client and should be sent to the attorney, and not be filed with the court or disclosed to the petitioner's attorney, without the permission of the respondent's attorney. The attorney should remind the doctor that the purpose of the examination is to evaluate the client's competence to make the decision regarding extraordinary medical treatment and, if appropriate, the client's substituted judgment.

6. The attorney shall thoroughly investigate the facts. This investigation shall include (a) review of the physician's certificate, or the clinical team report filed with the petition and the medical affidavit; (b) review of (i) hospital records, including medication history, (ii) Treatment Review Notes, including diagnoses, treatment history, and comments regarding the competence of the client, (iii) Unit and Nursing Notes, for the client's relationship with staff and degree of cooperation with treatment programs, and (iv) the client's Individual Service Plan; (c) interviewing of hospital staff, including doctors, nurses, and social workers, staff of other programs and other persons familiar with the client, and friends and family of the client.

7. The attorney shall use formal discovery mechanisms if indicated and tactically advisable. The attorney shall confer with the petitioner personally, or through counsel, whichever is appropriate, to determine the petitioner's reason for requesting the authorization to treat. The attorney shall confer with potential witnesses, including treating psychiatrists or psychologists, nursing and any other relevant staff, the prospective guardian, if any, and other possible witnesses suggested by the client. The attorney should also confer with other involved parties, for example, family members. Where necessary, witnesses should be subpoenaed. The attorney should meet with the witnesses in advance of the trial in order to prepare them for direct and cross-examination. The attorney shall review the medical record to identify those parts of the record which should not be admitted into evidence. The attorney should identify the petitioner's witnesses and make an effort, if tactically indicated, to interview them on the record and prepare cross-examination.

8. The attorney should meet again with the client to discuss the upcoming hearing, and should keep him/her informed of the progress of case preparation. S/he shall inform the client of the witnesses expected to be called and any other evidence s/he will present. The attorney should also discuss with the client the desirability of the client testifying. If the client wishes to testify, the attorney should thoroughly prepare the client for direct and cross-examination.

9. The attorney should establish a record of the client's history in the following areas: (a) history of treatment with proposed treatment, if any, including side effects; (b) pattern of participation in inpatient and outpatient treatment; (c) relative success of previous treatment plans; (d) current treatment plan; (e) school record; (f) criminal record; (g) employment record; (h) home situation, and (i) religious belief.

10. After reviewing the petition and the medical record the attorney shall determine if any procedural defenses can be raised, and file appropriate motions with supporting memoranda (e.g., if the petition fails to set forth facts in support of the petition.)

11. Prior to the hearing the attorney shall (a) prepare requests for findings of fact and law to be presented at the close of evidence; (b) prepare any pretrial motions, memoranda, and requests for rulings; (c) prepare consistent direct and cross-examination questions; (d) prepare arguments to the judge.

12. During the hearing the attorney should act as a zealous advocate for the client, insuring that proper procedures are followed and that the client's interests are well represented.

13. After the hearing the attorney shall meet with the client to explain the court's decision. The attorney shall ensure that periodic reviews and an expiration date are incorporated into the court's decree, as well as provision for changing the decree if the client's condition changes. *See Guardianship of Weedon*, 409 Mass. 196 (1991). The attorney shall continue to represent the client for purposes of periodic reviews.

14. If appropriate, the attorney shall assist the client in filing an appeal. (Where an appeal is filed, the attorney shall, without delay, notify CPCS's Mental Health Litigation Unit in order that appellate counsel may be assigned.)

STANDARDS LIST

TRIAL PRACTICE CHECKLIST
***
CIVIL COMMITMENTS

[for hearings under G.L. c.123, §8B, see Checklist for Guardianship with Authority to Admit and or Treat]

A. Initial Steps

1. Obtain a copy of petition and notify court of acceptance of appointment.

2. Call hospital, inform client of the assignment and arrange to meet with client.

3. Interview client to ascertain his/her wishes; explain your role to client; obtain written authorization to examine medical record; determine the desirability of an independent psychiatric evaluation.

4. Review hospital records, including:

   a. Medical Record - note medications prescribed, purposes of medication, side effects, physical condition.

   b. Treatment Review Notes - note diagnoses, treatment history (inpatient and outpatient), comments regarding incidents of violence to self or others.

   c. Unit Notes/Nursing Notes - note client's adjustment to unit, relationships with staff, degree of cooperation with treatment program.

5. Decide if there are any procedural defects and, if there are, file the appropriate motions.

6. If necessary, file a motion for an independent psychiatric evaluation.

7. Contact the independent psychiatrist, remind the doctor that the report should be sent to you, not to the court. Discuss the purpose of the report.

8. Confer with potential witnesses including:

   a. Treating psychiatrist/psychologist.

   b. Nursing staff.

c. Other ward staff.

d. Any other relevant staff (*e.g.* social worker or area office staff), specify.

e. Family members.

f. Other possible witnesses suggested by the client or developed through research and interviews.

9. Develop strategy; review the following areas:

a. Medication history, including side effects.

b. Pattern of participation in inpatient treatment, including past community residential and non-residential placements.

c. Pattern of participation in outpatient treatment, including past community residential and non-residential placements.

d. Relative degree of success of previous treatment plans (especially less restrictive alternatives).

e. Current treatment plan (degree of restriction in program, signs of progress).

f. Criminal record.

g. Employment record.

h. Prior commitments including previous evaluations.

i. Home situation, relationships with "significant others."

10. Meet with client to discuss strategy and alternatives to commitment; determine with client the appropriate course of action.

11. Meet with hospital attorney or treating physician to negotiate possible settlement.

12. Talk to client to review possible settlement agreement.

13. If possible, agree to settlement and have case dismissed.

14. If case cannot be settled, review in preparation for hearing. Consider presence or absence of:

a. Mental Illness (*i.e.*, "A substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include alcoholism ..." 104 CMR 27.05 (1)).

b. Likelihood of serious harm (*see* G.L. c.123, §1):

i. As exhibited by the client toward himself.

ii. As exhibited by the client toward others.

iii. Risk of physical impairment or injury due to inability to protect self in the community.

c. Possibility of a less restrictive placement.

d. Ability of petitioner to prove all elements beyond a reasonable doubt.

B. Preparation for Hearing

1. Formulate alternative final dispositions with regard to least restrictive treatment setting.

2. Contact programs involved, obtain confirmation of participation, consider meeting between program and client.

3. Prepare for hearing:

a. Prepare any pre-hearing motions and briefs.

b. Prepare well thought out theory of defense and consistent direct and cross-examination questions.

c. Prepare arguments to judge.

d. Prepare client.

e. Review testimony with witnesses; summon witnesses.

f. Draft proposed findings of fact and conclusions of law.

C. Post Hearing

1. Meet with client to discuss disposition and appellate rights.

2. Consider an appeal under G.L. c.123, §9(a).

3. Consider an application for discharge (G.L. c.123, §9(b)).

TRIAL PRACTICE CHECKLIST
***
GUARDIANSHIPS WITH AUTHORITY TO ADMIT AND/OR TREAT

[including hearings under G.L. c.123, §8B]

A. Initial Steps

1. Obtain copy of notice, determine return date for objection (check Probate Court records if necessary).

2. File an appearance, noting objection, before return date.

3. Interview client to ascertain his/her wishes; explain your role and that of GAL.

4. Review physician's certificate, affidavit and, where appropriate, the clinical team report filed with guardianship petition.

5. Review hospital records, including:

a. Medical Record - note medications prescribed, side effects experienced by client, client's physical condition.

b. Treatment Review Notes - note diagnoses, treatment history (inpatient and outpatient), comments concerning client's competency.

c. Unit Notes/Nursing Notes - note client's adjustment to unit, relationships with staff, degree of cooperation with treatment program.

d. In MR facilities, the client's ISP.

6. Identify petitioner and confer with him/her personally or through counsel (as appropriate):

a. Determine petitioner's reasons for seeking guardianship.

b. Discuss alternatives to guardianship.

c. Discuss possibility of a limited guardianship.

7. Confer with potential witnesses, including:

a. Treating psychiatrist/psychologist.

b. Nursing staff.

c. Other ward staff.

d. Any other relevant staff (*e.g.* social worker or QMRP), specify.

e. Prospective guardian.

f. Other possible witnesses suggested by the client.

8. Confer with other involved parties (*e.g.* family, others familiar with client).

9. Prepare detailed file memorandum, including:

a. Client's medication history, including side effects.

b. Client's pattern of participation in inpatient treatment.

c. Client's pattern of participation in outpatient treatment, including past community residential and non-residential placements.

d. Relative degree of success of previous treatment plans (especially less restrictive alternatives).

e. Current treatment plan, including restrictiveness of program and signs of clinical progress).

f. School record.

g. Criminal record.

h. Employment record.

i. Prior guardianships/commitments, including pertinent evaluations.

j. Client's home situation and relationships with "significant others."

k. Client's relationship with his/her children.

10. Consider suitability of prospective guardian (*i.e.* degree of concern, frequency of visits, availability, potential conflicts of interest, hostility, other more appropriate persons available to serve).

11. Consider possible alternatives to full (plenary) guardianship:

a. Limited guardianship.

b. Conservatorship.

c. Health care proxy.

d. Representative Payee.

12. Consider "*Rogers*" factors, if appropriate:

a. Client's expressed preferences regarding treatment.

b. Client's religious tenets.

c. Impact of client's decision on his family (*e.g.* the cost of treatment/lack of treatment to family in time and money, client's desire to minimize burden on family, manner and degree to which treatment will impact upon client's relationship with family, affection and assistance family can offer).

d. Probability and severity of adverse side effects; alternative treatment modalities.

e. Prognosis with treatment.

f. Prognosis without treatment.

g. Other pertinent considerations (*e.g.* criminal proceedings).

13. Consider "authority to admit/commit" criteria:

a. Mental illness (*i.e.*, "A substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include alcoholism ..." 104 CMR 27.05 (1)).

b. Likelihood of serious harm (*see* G.L. c.123, §1):

i. As exhibited by the client toward himself.

ii. As exhibited by the client toward others.

iii. Risk of physical impairment or injury due to client's inability to protect him/herself in the community.

c. Possibility of a less restrictive placement.

d. Ability of petitioner to prove all elements beyond a reasonable doubt.

B. Preparation for Hearing

1. Formulate alternative final dispositions (*e.g.* less-intrusive and less-restrictive treatment or placement, alternative medications, outpatient/structured day programs).

2. Decide upon best trial/settlement strategy and discuss with client.

3. Negotiate with petitioner (and GAL) to reach out of court settlement.

4. Take appropriate steps to discover petitioner's evidence/witnesses.

5. Consider pre-trial conference.

6. Prepare for hearing:

a. Consider motion for independent psychiatric/psychological examination; consider possible independent clinicians.

b. Prepare any pretrial motions, memoranda and requests for rulings.

c. Prepare direct and cross-examination questions.

d. Outline arguments to judge.

e. Prepare client.

f. Review testimony with witnesses; summon witnesses.

g. Draft proposed findings of fact and conclusions of law.

C. Post Hearing

1. Ensure that periodic review and termination dates are incorporated in order.

2. Ensure that provisions for modification of order and treatment plan, as client's needs change, are incorporated in order.

3. Ensure that monitor's responsibilities are clearly defined in order.

4. Meet with client to discuss disposition and appellate rights.

5. Consider an appeal.

CPCS PERFORMANCE STANDARDS GOVERNING
THE REPRESENTATION OF CLIENTS IN
MENTAL HEALTH APPEALS

[[*See* Mass.R.App.P. 16 and 20 for new limits on length of briefs and appendices]]
[[*See* Mass.R.App.P. 3(e) for trial counsel's obligation pending appointment of appellate counsel]]
[[*See amendment to* Mass.R.App.P. 8(b)(3) for appellant's obligation to file statement of issues]]
[[*See amendment to* Mass.R.App.P. 18(e) for number of transcript copies to be filed]]

1. Immediately upon receipt of the assignment of a case to an appellate counsel, appellate counsel shall: (a) file an appearance in the appropriate court; (b) communicate with the client to inform the client of the assignment; and (c) determine whether a stay of a judgment or order of the lower court should be sought pending appeal. In the event a stay should be sought, counsel shall immediately seek one in accordance with Mass. R. App. Proc. 6. If appellate counsel would like the assistance of a mentor, s/he should request a mentor assignment.

2. Within five days of receipt of the assignment of an appeal, appellate counsel shall determine whether the provisions of Mass. R. App. Proc. 8 and 9(b) and (c) have been complied with, and if they have not, shall immediately take the steps required to comply including filing any necessary motions for extension of

time.

3. Within three weeks after the assignment of a case to an appellate counsel, or, in the event that the transcript has not been completed at the time of the assignment, within three weeks after the receipt of the transcript, appellate counsel shall read the entire transcript and review the entire record of the case. Appellate counsel should at this time determine whether the record is accurate and complete and take such steps as may be necessary under Rule 8(c)-(e) to correct any errors. Appellate counsel shall also confer with any mentor assigned and with the appropriate Director about issues of law that may be raised on the client's appeal.

4. Appellate counsel shall keep the client and appropriate Director informed of all significant developments in the client's case. Appellate counsel shall respond in a timely manner to all correspondence from the client, provided that such correspondence is of a reasonable volume and at a reasonable interval. Appellate counsel shall inform the client and appropriate Director of the date, time and place scheduled for oral argument of the appeal as soon as the appellate counsel receives notice thereof from the appellate court.

5. Upon receiving notice of the assembly of the record, appellate counsel shall take the steps necessary to ensure the timely docketing of the appeal in accordance with Mass. R. Civ. Proc. 10(a)(1) and (3) and shall, where necessary, file appropriate motions for leave to proceed in forma pauperis pursuant to Mass. R. App. Proc. 12 or for payment or waiver of fees and costs, as necessary under G.L. ch. 261, §§27A through 27G.

6. After reading the transcript, appellate counsel shall confer with the client and with the trial counsel, if appropriate, about the issues which may be raised on the client's appeal. Appellate counsel should pay particular attention to whether a claim as to ineffective assistance of trial counsel may form the basis of an appeal. *See*, *Care and Protection of Stephen*, 401 Mass. 144 (1987).

7. If at any time the client insists on having briefed on his or her appeal a contention which, in the judgment of the appellate counsel, cannot be supported by any rational argument, the appellate counsel shall (a) immediately inform and consult with the relevant Director and if the Director concurs, (b) inform the client of the client's right with respect to such contention pursuant to *Commonwealth v. Moffett*, 383 Mass. 201, 203-209 (1981); (c) supply the client with a copy of the Moffett opinion; and (d) if the client thereafter wishes to invoke his or her *Moffett* rights with respect to such contention, comply in all respects with the guidelines of the *Moffett* case set forth id. at 208-209 and n. 3. *Care and Protection of Valerie*, 403 Mass. 317 (1988).

8. Appellate counsel shall timely file in the appropriate court all motions necessary or advisable to preserve and perfect the client's appellate rights, including, where necessary, motions pursuant to Rule 14(b) of the Massachusetts Rules of Appellate Procedure to enlarge the time for filing the brief on behalf of the client, and motions pursuant to Rule 8 of the Massachusetts Rules of Appellate Procedure to correct or expand the record.

9. The brief filed by appellate counsel on behalf of the client shall conform in all respects with Rules 16, 18 and 20 of the Massachusetts Rules of Appellate Procedure, and shall be of high quality.

10. Appellate counsel shall transmit to the client and the appropriate Director a copy of the brief filed on the client's behalf, and shall also transmit to the client a copy of the brief for the Commonwealth and copies of all other substantive documents pertaining to the appellate proceedings.

11. Oral argument of the appeal on behalf of the client should not, absent unusual circumstances and with the approval of the client and the appropriate Director, be waived with respect to any case.

12. The appellate counsel shall inform the client by letter of the decision of the appellate court in the client's case on the date the decision is delivered to the appellate counsel and shall transmit to the client and the appropriate Director a copy of the decision.

13. If the decision of the Appeals Court is adverse to the client, appellate counsel shall promptly inform the client of the client's right pursuant to Rule 27.1 of the Massachusetts Rules of Appellate Procedure to make application to the Supreme Judicial Court for further appellate review of the case; and, if the client requests that such application be made, the appellate counsel shall prepare and file on the client's behalf such application within the time prescribed by said Rule 27.1.

14. In the event that the client's appeal is unsuccessful, appellate counsel shall have the discretion, upon the request of the client and subject to the approval of the appropriate Director, to seek relief when in the best judgment of the appellate counsel there exists a reasonable likelihood that such relief may be obtained, by appeal or petition in the federal courts.

Adopted by the Committee on 2/10/93

STANDARDS LIST

CPCS PERFORMANCE STANDARDS GOVERNING
THE REPRESENTATION OF CLIENTS IN
"SEXUALLY DANGEROUS PERSON" PROCEEDINGS

CONSTRUCTION

DER